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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RAMON MORA,

Plaintiff,

v.

S. SALAHUDDIN, et al.,

Defendants.

CASE NO. 1:08-cv-01054-GSA PC

SCREENING ORDER (1) FINDING AMENDED COMPLAINT STATES CLAIMS AGAINST DEFENDANTS SALAHUDDIN AND EDWARDS, (2) DISMISSING DECLARATORY RELIEF AND OFFICIAL CAPACITY CLAIMS, AND (3) DISMISSING OTHER NAMED DEFENDANTS FOR FAILURE TO STATE A CLAIM

(Doc. 7)

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Screening Order

I. Screening Requirement

Plaintiff Ramon Mora, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 and California tort law on July 23, 2008. On February 23, 2009, the Court dismissed Plaintiff’s complaint for failure to state any claims under section 1983. Plaintiff filed an amended complaint on March 26, 2009.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall

1 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
2 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the pleader
4 is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
5 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
6 do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v.
7 Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set forth “sufficient
8 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Iqbal, 129 S.Ct. at
9 1949 (quoting Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal
10 conclusion are not. Id. at 1949.

11 **II. Plaintiff’s Claims**

12 Plaintiff, who is housed at Pleasant Valley State Prison in Coalinga, California, brings this
13 action for denial of proper medical care, in violation of the Eighth Amendment of the United States
14 Constitution. In addition, Plaintiff alleges a claim for negligence under California law.

15 **A. Defendants Salahuddin and Edwards**

16 Plaintiff alleges that on or around August 6, 2007, he was seen by Defendant Salahuddin, a
17 dentist, for the extraction of his infected wisdom tooth. Plaintiff alleges that Defendant Salahuddin
18 used very little novacaine and caused Plaintiff serious pain during the procedure. Further, Defendant
19 Salahuddin failed to clear up the infection prior to surgery and failed to prescribe antibiotics
20 following surgery, resulting in the spread of infection.

21 The day after surgery, Plaintiff’s face was red and swollen. The condition continued to
22 worsen and the swelling hardened, became enlarged, and spread to Plaintiff’s neck. By August 8,
23 2007, Plaintiff could barely swallow or speak.

24 Plaintiff was seen by Defendant Edwards, another dentist, who was shocked at the swelling
25 and prescribed antibiotics. Defendant Edwards said he would check on Plaintiff, but did not see
26 Plaintiff again until August 10, 2007, at which time Plaintiff’s face was a “red blur of pain,” his
27 throat was swelling shut, and he could not “breathe, eat, drink, talk or sleep.” (Doc. 7, Amend.
28 Comp., p. 4.) When Plaintiff was seen by Defendant Edwards, he could not speak and had to write

1 down his symptoms. Plaintiff was taken to an outside hospital approximately four hours later, where
2 he was told he needed emergency surgery or his throat could swell shut and kill him. Plaintiff was
3 hospitalized for ten days following surgery.¹

4 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
5 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096
6 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part
7 test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by
8 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or
9 the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need was
10 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059
11 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th
12 Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a
13 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused
14 by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060).

15 Plaintiff’s allegations are sufficient to support a claim for relief against Defendants
16 Salahuddin and Edwards for violation of the Eighth Amendment. Fed. R. Civ. P. 8(a). Plaintiff’s
17 allegations therefore also support a claim for negligence under state law.

18 **B. Defendants Doehring, Ragan, O’Brien, Hernon, Igbinosa, Alvarez, Hansen,**
19 **Shannon, Yates, and Cate**

20 Under section 1983, Plaintiff must demonstrate that each defendant *personally* participated
21 in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) (emphasis
22 added). The Supreme Court recently emphasized that the term “supervisory liability” is a misnomer.
23 Iqbal at 1949. “Government officials may not be held liable for the unconstitutional conduct of their
24 subordinates under a theory of *respondeat superior*.” Id. at 1948. Rather, each government official,
25 regardless of his or her title, is only liable for his or her own misconduct, and therefore, Plaintiff
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27
28 ¹ In his original complaint, Plaintiff alleges he was admitted to the hospital for Ludwig’s angina, a serious,
potentially life threatening infection of the mouth tissue.

1 must demonstrate that each defendant, through his or her own individual actions, violated Plaintiff's
2 constitutional rights. Id. at 1948-49.

3 Plaintiff's conclusory allegations that Defendants Doeiring, Ragan, and O'Brien were made
4 aware of his serious medical condition and failed to take positive steps to alleviate his pain and
5 suffering are insufficient to support a claim that they violated the Eighth Amendment or were
6 negligent under state law. Further, Plaintiff's amended complaint sets forth no facts linking
7 Defendants Hernon, Igbinosa, Alvarez, Hansen, Shannon, Yates, and Cate to any acts or omissions
8 that violated Plaintiff's rights. The mere possibility of misconduct is insufficient to state a claim.
9 Id. at 1950. Because Plaintiff's amended complaint does not set forth facts sufficient to support
10 plausible claims for relief against Defendants Doeiring, Ragan, O'Brien, Hernon, Igbinosa, Alvarez,
11 Hansen, Shannon, Yates, and Cate, they are entitled to dismissal from this action. Id. at 1949-50.

12 **C. Declaratory Relief**

13 In addition to money damages, Plaintiff seeks a declaration that his rights were violated. "A
14 declaratory judgment, like other forms of equitable relief, should be granted only as a matter of
15 judicial discretion, exercised in the public interest." Eccles v. Peoples Bank of Lakewood Village,
16 333 U.S. 426, 431 (1948). "Declaratory relief should be denied when it will neither serve a useful
17 purpose in clarifying and settling the legal relations in issue nor terminate the proceedings and afford
18 relief from the uncertainty and controversy faced by the parties." United States v. Washington, 759
19 F.2d 1353, 1357 (9th Cir. 1985). In the event that this action reaches trial and the jury returns a
20 verdict in favor of Plaintiff, that verdict will be a finding that Plaintiff's constitutional rights were
21 violated. Accordingly, a declaration that Defendants Salahuddin and Edwards violated Plaintiff's
22 rights is unnecessary, and this action shall proceed as one for money damages only.

23 **D. Official Capacity Claims**

24 Plaintiff alleges claims against Defendants Salahuddin and Edwards in their individual and
25 official capacities. "The Eleventh Amendment bars suits for money damages in federal court against
26 a state, its agencies, and state officials in their official capacities." Aholelei v. Dept. of Public
27 Safety, 488 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted). Because this action properly
28 proceeds as one for money damages only, Plaintiff's official capacity claims shall be dismissed.

1 **III. Conclusion and Order**

2 Plaintiff's amended complaint states claims against Defendants Salahuddin and Edwards for
3 violation of the Eighth Amendment and negligence. However, Plaintiff allegations do not support
4 claims against Defendants Doebling, Ragan, O'Brien, Hernon, Igbinsosa, Alvarez, Hansen, Shannon,
5 Yates, and Cate. Plaintiff was previously notified of the deficiencies in his claims and provided with
6 the opportunity to amend, but was unable to cure the deficiencies. Noll v. Carlson, 809 F.2d 1446,
7 1448-49 (9th Cir. 1987). Accordingly, it is HEREBY ORDERED that:

- 8 1. This action for damages shall proceed on Plaintiff's amended complaint, filed March
9 26, 2009, against Defendants Salahuddin and Edwards for violation of the Eighth
10 Amendment and negligence;
- 11 2. Plaintiff's declaratory relief claim is dismissed for failure to state a claim;
- 12 3. Plaintiff's official capacity claims against Defendants Salahuddin and Edwards are
13 dismissed for failure to state a claim; and
- 14 4. Defendants Doebling, Ragan, O'Brien, Hernon, Igbinsosa, Alvarez, Hansen, Shannon,
15 Yates, and Cate are dismissed from this action based on Plaintiff's failure to state any
16 claims against them.

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19 IT IS SO ORDERED.

20 **Dated: August 4, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE